IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION-FOR CONTEMPT No. 1487 of 1998
With
MISC.CIVIL APPLICATION No. 1429 of 1999
With
MISC.CIVIL APPLICATION No. 1162 of 2003
In
CIVIL APPLICATION No. 217 of 2000
With
CIVIL APPLICATION No. 3102 of 2001
In
MISC.CIVIL APPLICATION No. 1487 of 1998

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT
&
HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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SIR C J N Z MADRESA TRUST - Applicant(s)
Versus
DARA D JOKHI & 15 - Opponent(s)

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Appearance :
MR ZUBIN F BHARDA for Applicant(s) : 1,
MR MEHUL S SHAH for
MR SURESH M SHAH for Opponent(s) : 1,
MR AD OZA for Opponent(s) : 2,
MR AV PRAJAPATI for Opponent(s) : 2,
RULE SERVED for Opponent(s) : 3, 9,
MRS KETTY A MEHTA for Opponent(s) : 4,6 - 7.
MR TS NANAVATI for Opponent(s) : 5,
MR AD DESAI for Opponent(s) : 8,
RULE NOT RECD BACK for Opponent(s) : 10, 13, 16,

SERVED BY AFFIX.-(R) for Opponent(s) : 11 - 12,14 - 15.

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT
and
HONOURABLE MR.JUSTICE S.R.BRAHMBHATT
Date : 07/04/2006

ORAL JUDGMENT (Per : *HON'BLE* MS. JUSTICE R.M.DOSHIT)

This application had come up for hearing before the Bench comprising Mr. Justices R. Balia & A.R Dave. By order dated 2nd July, 1999, the Bench observed that, "***the petition contains allegations both relating to wilful disobedience of an injunction order amounting to civil contempt against some of the respondents as well as charges of criminal contempt relating to obstructing the course of proceedings and administration of justice by some of the respondents. It is appropriate that address of civil contempt and criminal contempt are segregated.***" The Bench, therefore, directed, " ***to segregate the assertions made in respect of civil contempt and criminal contempt and file two or more separate fresh petitions as are deemed appropriate to give true picture. The proceedings taken thus far in this application shall be considered to be proceedings in the so segregated applications filed as far as they relate to such proceedings independently and these proceedings shall be deemed to be in continuation of this application.***" In

view of the above direction, the applicant took out Criminal Misc. Application No. 4565 of 1999 in respect of the allegations of commission of criminal contempt for obstructing the course of proceedings and administration of justice. We are informed that the said criminal misc. application has been heard and decided separately. In respect of the alleged civil contempt, the applicant has taken out the above Misc. Civil Application No. 1429 of 1999.

The applicant herein is a Public Charitable Trust duly registered as such. The applicant-Trust [hereinafter referred to as, "***the Trust***"] runs and manages a High School at Navsari. The opponent no.1-Dara D. Jokhi was the principal in the said High school. For certain acts of misconduct, a disciplinary action was contemplated against the said Dara D. Jokhi. Pending the disciplinary action, by Order dated 13th December, 1996, the said Dara D. Jokhi was suspended from service. He was also directed to hand over the charge to the incharge Principal, the opponent no.2. *Nevertheless*, the said Dara D. Jokhi forcibly broke open the sealed cupboards and removed certain records. Feeling aggrieved, the Trust approached the Gujarat Secondary Education Tribunal, Ahmedabad [hereinafter referred to as, "***the Tribunal***"] by

Application No. 749 of 1996. On 20th December, 1996 the said Application No. 749 of 1996 was entertained by the Tribunal. The Tribunal was pleased to pass *ad interim* order restraining the said Dara D. Jokhi from entering the High School premises and from obstructing the Incharge Principal from performing his duty.

The opponents claiming to be the Trustees of the Trust, by Order dated 13th January, 1998, cancelled the order of suspension made against the said Dara D. Jokhi and in defiance of the aforesaid order of injunction made by the Tribunal directed the said Dara D. Jokhi to report for duty. The said Dara D. Jokhi also, inspite of the said order of injunction, without approaching the Tribunal or seeking permission of the Tribunal, on 13th January, 1998 entered the school premises; forcibly took over the charge from the incharge principal, the opponent no.2, and resumed the duty as principal of the High School. He has since been functioning as the Principal of the High School in flagrant violation of the injunction issued by the Tribunal. The said Dara D. Jokhi has thus committed contempt of the Tribunal on 13th January, 1998 and has continued his contumacious conduct till the date.

Feeling aggrieved, the Trust had approached the

Tribunal by Application Exh. 39 preferred under Order 39 Rule 2-A CPC. The opponent no.6 Dara K. Deboo filed application Exh. 40 for transfer of the case alleging bias against the Tribunal. A similar application Exh. 41 was made by the opponent no.1-Dara D. Jokhi and application Exh. 42 by one Manubhai Lalbhai Desai, the opponent no.5. By the said application the said Dara K Deboo declared that he was the newly elected chairman of the Trust. He expressed lack of faith in the Tribunal. By Application Exh. 44, the said Dara K. Deboo sought leave to withdraw the application for transfer [*Exh. 40*]. The aforesaid Dara D. Jokhi also took out Application Exh. 45 for transfer of his Application No. 778 of 1998 to another Tribunal as he had no faith in the Tribunal. By Application Exh.46, he requested the Tribunal to decide his Application Exh. 45 in priority. All the aforesaid applications were heard by the Tribunal. The Tribunal observed that, "***Admittedly, Mr. Dara K. Dabu was not in the management and was not a trustee on the date when the application no. 749 of 1996 was instituted. In my view, therefore, unless and until the P.T.R report is accepted and the relevant entries are made by the Charity Commissioner, as required under sec. 21 of Trust Act, it cannot be said that Mr. Dara K. Dabu is a Trustee of the***

Trust, much less the Chairman as claimed by him. His act of passing the order on 4.1.1998, revoking the suspension order dated 6.12.1996 and then restoring Mr. Jokhi suspended employee as Head Master is clearly without any authority of law and prima facie accounts to interference with the interim injunction granted by this Tribunal on 20.12.1996." The Tribunal also observed that, "***The allegations, therefore, made in the transfer application is, therefore, factually incorrect and the slightest care in verifying the record, on the part of the Advocate, would have averted this unpleasant and incorrect allegation."*** Considering the conduct of the parties, the Tribunal held that, "***..it clearly emerges that the order of revocation of suspension and restoring the suspended employee Mr. Dara D. Jokhi, by an order of Mr. Dara K. Dabu, who is not having any authority of law, ex facie amounts to the breach of injunction issued by this Tribunal on 20.12.1996. The action of the contemners in committing breach of injunction, then filing of caveats and then moving the applications for transfer of case by contemners, preventing the court from hearing the breach of injunction applications by making frivolous allegations against the court, in my opinion, amounts to clear case of abuse of process of Court."*** In view of the

said observations made by the Tribunal, the Tribunal in exercise of inherent powers vested by Section 151 CPC directed the parties to maintain *status quo* as prevalent prior to 4th January, 1998 and to act according to the injunction of the Tribunal dated 20th December, 1996.

Pending this proceedings, the applicant took out Civil Application No. 217 of 2000 and sought direction that the opponent no.1 Dara D. Jokhi be restrained from discharging his duties as Principal of the High School. In the said Civil Application No. 217 of 2000, the applicant took out above Misc. Civil Application No. 1162 of 2003 alleging that the opponents had continued to commit contempt of the Court and that they be punished accordingly. The above Civil Application No. 3102 of 2001 has been taken out by the opponent no.2; the incharge principal seeking direction against the opponent no.1 Dara D. Jokhi restraining him from entering the school premises and from interfering the activities of the school.

Mr. Bharda has submitted that not only the concerned opponents have committed contempt of the Tribunal, they have abused the process of law, as discussed by the Tribunal. Inspite of the aforesaid order

of restoration of *status quo ante* made by the Tribunal, till this date the said order has not been implemented. The said Dara D. Jokhi is still functioning as the Principal of the Secondary School. He has submitted that the conduct of the concerned opponents betrays scarce regard for the Tribunal and its authority. The opponents, therefore, are required to be held guilty of the contempt of the Court and be suitably punished.

The application is contested by Mr. Shah. He has submitted that the opponent no.1 Dara D. Jokhi was and is the servant of the Trust. He was required to carry out the order of his employer. If his employer had cancelled the order of suspension and reinstated the said opponent in service, the opponent Dara D. Jokhi was under bounden duty to carry out the said order to report for duty and to take over the charge. This having been done, the said opponent cannot be held guilty of contempt of the Tribunal, as alleged.

Mrs. Mehta has appeared for the aforesaid trustee -Shri Aspi Fanibanda and Dara K. Deboo. She has submitted that the said opponents were elected to be the trustees of the Trust. The order of revoking the suspension of Dara D. Jokhi was made in discharge of their duty. The

said opponents, therefore, cannot be held guilty of the contempt of the Tribunal nor they should be punished for such alleged act.

We have heard the learned advocates and perused the record. It cannot be gainsaid that the Tribunal had by its Order dated 20th December, 1996 restrained the opponent no. 1 Dara Jokhi from entering the school premises and from obstructing the opponent no.2, the incharge principal from performing his duty. If at all the aforesaid opponents Mr. Aspi Fanibanda and Dara Deboo had been appointed as the Trustees; the only proper way was to approach the Tribunal for vacation of the aforesaid *interim* relief and to allow the opponent no.1 Dara Jokhi to report for duty. The opponent no. 1 Dara D. Jokhi also ought not to have taken the liberty which he did. Instead, he ought to have approached the Tribunal for vacation of the *interim* relief. All the opponents thus overlooked the authority of the Tribunal and the order made by it. They acted to serve their whims and caprice. To cloak their illegal actions, they went further to make allegations against the Tribunal. The said opponents have thus succeeded in their design to avoid the Tribunal and to disobey the order made by the Tribunal. Even before this Court, neither of the said

opponents is repentant nor any of them has tendered apology.

In above view of the matter, we hold that the aforesaid opponents no. 1-Shri Dara D. Jokhi; no.4-Shri Aspi Fanibanda and no. 6-Shri Dara K. Deboo are guilty of committing contempt of the Tribunal. We convict the said three opponents for committing contempt of the Tribunal as envisaged by Section 10 read with Section 12 of the Contempt of Courts Act, 1971. The opponent no.1-Dara D. Jokhi is ordered to be detained in Civil Prison for a period of six months. A fine of Rs. 2000/= each is imposed upon the Opponent no. 4-Aspi Fanibanda and Opponent no.6-Dara K. Deboo. Rest of the opponents are discharged.

Misc. Civil Application is allowed to the above extent. Rule is made absolute accordingly.

In view of this Order, we do not persue the contempt proceedings initiated against the opponents in above Misc. Civil Application No. 1429 of 1999 & Misc. Civil Application No. 1162 of 2003. Both the said Applications stand disposed of accordingly. Rule *nisi* issued in each Application stands discharged. Civil Applications stand disposed of.

Registry shall maintain copy of this judgment in each Misc. Civil Application.

{Miss R.M Doshit, J.}

{S.R Brahmbhatt, J.}

*Prakash**